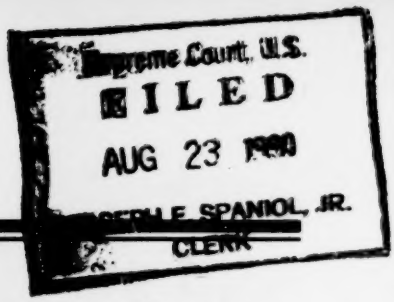
(1)

90-343

No.



In The
Supreme Court of the United States
October Term, 1990

FLOSSIE WILLIAMS MCMURRY,
Petitioner

v

STEVEN AMOS, CHANCERY CLERK,
COPIAH COUNTY, MISSISSIPPI,
BOARD OF SUPERVISORS, COPIAH COUNTY MISSISSIPPI,
ERMA D. LEWIS, TAX COLLECTOR FOR THE
CITY OF CRYSTAL SPRINGS, MISSISSIPPI
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

FLOSSIE WILLIAMS MCMURRY
Pro Per
1321 E. Larned
Apartment 201
Detroit, Michigan 48207
(313) 393-0143

ROMAN PRINTING CORPORATION, 550 W. FORT STREET
DETROIT, MICHIGAN 48226 (313) 962-0744

52

QUESTIONS PRESENTED FOR REVIEW

I.

WHETHER THE MISSISSIPPI REDEMPTION STATUTE, MISS §27-45-3 THAT PROVIDES IN PERTINENT PART, THAT . . . "ANY PERSON INTERESTED IN LAND SOLD FOR TAXES MAY REDEEM" WAS PROPERLY INTERPRETED BY THE U.S. DISTRICT COURT OF MISSISSIPPI AND THE FIFTH CIRCUIT COURT OF APPEALS TO MEAN, IN CONFORMITY WITH SUPREME COURT CASE PRECEDENT, THAT ANY THIRD PARTY MAY EXERCISE THE RIGHT OF REDEMPTION NOTWITHSTANDING THEY HAVE NO LEGAL OR EQUITABLE INTEREST IN SUCH PROPERTY?

II.

DOES PLAINTIFF'S COMPLAINT STATE A CIVIL RIGHTS CAUSE OF ACTION AGAINST THE PUBLIC OFFICIAL, THE CHANCERY CLERK, WHERE IT ALLEGES A STATE STATUTORY VIOLATION AND A SPECIFIC CONSTITUTIONAL DEPRIVATION AND A FEDERAL STATUTORY VIOLATION RESULTING FROM THE STATE VIOLATION?

III.

IS A GOVERNMENTAL ENTITY IMMUNE TO SUIT FOR CIVIL RIGHTS VIOLATION UNDER §1982 OF TITLE 42 AND THE THIRTEENTH AMENDMENT?

PARTIES

The parties to the proceedings are set forth as follows:

STEVEN AMOS, Chancery Clerk of Copiah County, a Constitional officer of the State of Mississippi and elected under the laws of the State,

and

THE BOARD OF SUPERVISORS of Copiah County,
and elected under the laws of the State,
ERMA, LEWIS, Tax Collector of the City of Crystal Springs,
Mississippi, a Constitutional officer of the State and elected
under the laws of the state,
Respondents,

and

FLOSSIE WILLIAMS McMURRY,
Petitioner.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED FOR REVIEW	i
PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	2
STATUTE INVOLVED	2
STATEMENT OF THE CASE	2
ARGUMENT	4
A. THE FIFTH CIRCUIT COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S GRANTING OF SUMMARY JUDGEMENT TO DEFENDANT, CHANCERY CLERK, AS TO COUNT I ON THE GROUNDS THAT AS A MATTER OF LAW THAT A THIRD PARTY WHO HAS NEITHER A LEGAL OR EQUITABLE INTEREST IN PROPERTY FORECLOSED AGAINST FOR DELINQUENT TAXES MAY EXERCISE THE RIGHT OF REDEMPTION UNDER A STATE'S REDEMPTION STATUTE	4
B. THE PLAINTIFF'S COMPLAINT STATES A CIVIL RIGHTS CAUSE OF ACTION AGAINST THE PUBLIC OFFICIAL, THE CHANCERY CLERK, UNDER TITLE 42 §1982 BECAUSE IT SUBSTANTIALLY ALLEGES MORE THAN A MERE STATE STATUTORY VIOLATION BUT A SPECIFIC CONSTITUTIONAL DEPRIVATION AND FEDERAL STATUTORY VIOLATION RESULTING FROM THE VIOLATION	13

C. THAT A GOVERNMENTAL ENTITY IS LIABLE AND IS NOT IMMUNE TO SUIT FOR CIVIL RIGHTS VIOLATION UNDER §1982 OF TITLE 42 AND THE THIRTEENTH AMENDMENT .. 18

D. PLAINTIFF'S COMPLAINT STATES A CIVIL RIGHTS CAUSE OF ACTION AGAINST THE CITY TAX COLLECTOR OF CRYSTAL SPRINGS, MISS., IN COUNT VI BECAUSE IT SUBSTANTIALLY ALLEGES MORE THAT A MERE STATE STATUTORY VIOLATION BUT A SPECIFIC CONSTITUTIONAL AND FEDERAL STATUTORY VIOLATION RESULTING FROM THE VIOLATION 23

CONCLUSION 24

APPENDIX A A-1

APPENDIX B B-1

APPENDIX C C-1

TABLE OF AUTHORITIES

CASES	PAGE
Adickes v. *S. H. Kress & Co.*, 398 U.S. 144, 26 L. Ed. 2d 142, 90 S. Ct. 1598 (1970)	15
Baker v. *F & F Investment Company, Federal Housing Administration, et. al.*, 489 F. 2d 829 (1973)	19
Beauchamp v. *McLaughlin*, 25 So. 2d 771	10
Begole v. *Biglow*, 213 F. 606	9
Brannon v. *Lyon*, 38 So. 609	10
Brunson v. *Hyatt*, 409 F. Supp. 35	18
Carey v. *Piphus*, 435 U.S. 247, 55 L. Ed. 2d 252, 98 S. Ct. 1042 (1978)	15
Carlson v. *Green*, 446 U.S. 14, 64 L. Ed. 2d, 15, 100 S. Ct. 1468 (1980)	15
Carter v. *Moore*, 183 So. 519	10
Classon v. *Shopko Stores, Inc.*, 435 F. Supp. 1186	18
Conley v. *Gibson*, 355 U.S. 41, 78 S. Ct. 99, 2 L. Ed. 2d 80	19
Corbett v. *Nutt*, Supreme Court 10 Will 464, 19 L. Ed. 977	9
Darrington v. *Rose*, 90 So. 632	10
Dubois v. *Hepburn*, 10 Pet. 1, 19 L. Ed. 325	9, 10, 11
Equity Services Co. v. *Hamilton*, 227 So. 2d 201	7
Gatewood v. *Roquemore*, 118 Pa. 2d, 1020	10
Har-readee v. *Clayton*, 56 M. 383	10
Hellems v. *Rozel*, 256 F. 606	9

Jones v. *Alfred H. Hayer Co.*, 392 U.S. 409, 20 L. Ed. 2d 1189, 88 S. Ct. 2186 14

Jose Chavez-Salido, et al, v. *Clarence E. Cabell,* 427 F. Supp. 158 (1977) 21

Knight v. *Auciello*, 453 F. 2d 852 13

LaRaza Unida v. *Volpe*, 440 F. Supp. 904 15

Lathon v. *Parish of Jefferson*, 357 F. Supp. 558 18

Lee v. *Southern Home Sites Corp.*, 444 F. 2d 143. 13

McDowell v. *Texas*, 465 F. 2d 1342 16

McGhee v. *Martin*, 53 M. 519 10

Maine v. *Thiboutot*, 448 U.S. 1, 65 L. Ed. 2d 555, 100 S. Ct. 2502 (1980) 15

Martin v. *Blackburn*, 581 F. 2d 94 15

Maybanks v. *Ingraham*, 378 F. Supp. 913 (1974) 20

Mead v. *Day*, 54 M. 58 10

Monroe v. *Pape*, 365 U.S. 167, 5 L. Ed. 2d 492, 81 S. Ct. 473 (1961) 15

Navarette v. *Enomoto*, 536 F. 2d 277 13

Nugent v. *Sheppard*, 318 F. Supp. 314 18

Richton Tio & Timber Co. v. *McWilliams*, 67 So. 2d 374 10

Seaton v. *Sky Realty Co.*, 491 F. 2d 634 13

Seward v. *Dogan*, 21 So. 2d 292 10

Stansifer v. *Chrysler Motors Corporation*, 487 F. 2d 59 4

Womack v. *Central Lumber Co.*, 94 So. 2d 10

STATUTES

Mississippi Code 27-45-3 ..... 5, 8, 9
Mississippi Code 27-45-3 11
U.S.C. Title 42 1982 13
U.S.C. Title 42 1983 14

No. _____

In The

Supreme Court of the United States

October Term, 1990

FLOSSIE WILLIAMS MCMURRY,
Petitioner

v

STEVEN AMOS, CHANCERY CLERK,
COPIAH COUNTY, MISSISSIPPI,
BOARD OF SUPERVISORS, COPIAH COUNTY MISSISSIPPI,
ERMA D. LEWIS, TAX COLLECTOR FOR THE
CITY OF CRYSTAL SPRINGS, MISSISSIPPI
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

BRIEF FOR PETITIONER

OPINIONS BELOW

The Petitioner (hereinafter "McMurry") represents unto this Court that she is aggrieved by the Panel decision in an unreported decision of *Flossie Williams McMurry* v. *Steven Amos*, Case No. 89-4762 of the Fifth Circuit Court of Appeals on April 24, 1990. That decision affirmed the decision of the United District Court of Mississippi, Jackson Division, in

the case of *Flossie Williams McMurry* v. *Steven Amos, et al*, No. J88-0238(B) in which the Court granted Summary Judgment to Respondents on Count I for Quieting title and dismissed the remaining civil rights counts for a failure to state a claim for which relief can be granted.

STATEMENT OF JURISDICTION

The United States District Court granted Summary Judgment on Count I to Quiet Title to the subject property and dismissed the remaining counts of petitioner's complaint. On September ___, 1989. McMurry appealed the order of the United States District Court of Jackson Mississippi, to the Fifth Circuit Court of Appeals. The Fifth Circuit Court of Appeals entered a judgment affirming the United States District Court's Decision on April 24, 1990. This petition is filed within 90 days thereof. The jurisdictions of this Court is invoked pursuant to §28 U.S.C. §1257(3).

STATUTE INVOLVED

The following section of Mississippi Code §27-45-3 is invoked in this case: Miss. §27-45-3, which provides in pertinent part as to whom may redeem property from a tax foreclosure sale:

> "The owner or any persons for him with his consent, or any person interested in the land sold for taxes, may redeem the same, . . ."

STATEMENT OF THE CASE

This case is an action to quiet title to property located at 106 Forest Street, Crystal Springs, Copiah County, Mississippi, which is more fully described as: Part Lot 34, Square 4, of the Stowell 1/5 Subdivision in the City of Crystal Springs,

Copiah County, Mississippi, Commonly Known as 106 Forest Street, Crystal Springs, Mississippi. An allegation of a civil rights violation under the Thirteenth Amendment and Title 42 §1982 in the failure of the Chancery Clerk to issue Plaintiff, a Black American, a Tax Deed in September 1983, after the statutory redemption period expired following the tax foreclosure sale conducted on September 21, 1981, is also made against the Chancery Clerk of Copiah County and the Copiah County Board of Supervisors.

Plaintiff, a Black American woman, filed a complaint in the United States District Court for the Eastern District of Michigan, Southern Division on December 21, 1987. The case was removed on grounds of improper venue to the United States District Court of Mississippi, Southern Division, in Jackson, Mississippi, on April 25, 1988, by Judge Woods. Depositions of Defendant, Steven Amos, Chancery Clerk of Copiah County, Plaintiff, Flossie Williams McMurry, and Christine Barlow, Tax Assessor and Collector of Copiah County, were taken on March 3, 1989 in Jackson, Mississippi. Defense Counsel for Steven Amos, Chancery Clerk, and the Board of Supervisors filed a Motion for Summary Judgment on May 16, 1989. The Court granted Summary Judgment to Defendant on July 24, 1989 on the grounds that there was no genuine issue of material fact that the property constituting the subject matter of the lawsuit had been redeemed on January 2, 1982, and that there was a failure to state a cause of action in the remaining counts regarding the civil rights violation under Title 42 §1982 and of both the Board of Supervisors and the Chancery Clerk. The Court issued an Opinion and Memorandum of Law on July 24, 1989. The Judgment was entered September 14, 1989, and Plaintiff filed an Appeal of Right on October 14, 1989. The Fifth Circuit Court of Appeals affirmed the lower court's decision on April 24, 1990. Petitioner files a petition of writ of certiorari within 90 days.

ARGUMENT

A. THE FIFTH CIRCUIT COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S GRANTING OF SUMMARY JUDGMENT TO DEFENDANT, CHANCERY CLERK, AS TO COUNT I ON THE GROUNDS THAT AS A MATTER OF LAW THAT A THIRD PARTY WHO HAS NEITHER A LEGAL OR EQUITABLE INTEREST IN PROPERTY FORECLOSED AGAINST FOR DELINQUENT TAXES MAY EXERCISE THE RIGHT OF REDEMPTION UNDER A STATE'S REDEMPTION STATUTE

Summary judgment is proper only where there is no genuine issue of any material fact or where, viewing evidence and inferences which may be drawn therefrom in a light most favorable to adverse party, movant is clearly entitled to prevail as a matter of law. *Stansifer* v. *Chrysler Motors Corporation*, 487 F. 2d 59. The trial court may take into consideration all of the pleadings in the case in deciding whether summary judgment should be granted.

Plaintiff/Appellant claims that as a matter of law there had been no "valid redemption" of the subject property of this lawsuit on January 4, 1982, as claimed by the Defendant in its Motion for Summary Judgment such that the Plaintiff's right to a tax deed on September 21, 1983 was legally cut off.

The property constituting the subject matter of this lawsuit was originally owned in fee simple absolute by Willie Williams Douglas and was located at 106 Forest Street, Crystal Springs, Mississippi 39059, Copiah County and is more fully described as:

> PART LOT 34, SQUARE 4, OF THE STOWELL ⅓ SUBDIVISION IN THE CITY OF CRYSTAL SPRINGS, COPIAH COUNTY, MISSISSIPPI.

On June 14, 1977, Willie Williams Douglas conveyed the subject property to Plaintiff/Appellant (herein referred to as McMurry) by warranty deed. Mrs. Douglas died on November 24, 1978. The heirs of Mrs. Douglas filed suit against McMurry in the Chancery Court of Copiah County in December 1978, to have the warranty deed rescinded on the grounds of undue influence. Judge Michael Carr heard the case on January 31, 1979, and entered an order cancelling McMurry's warranty deed.

However, the Tax Assessor and Collector of Copiah County, Steven Amos, foreclosed against the subject property for the 1980 delinquent property taxes. McMurry, a Black American woman, attended the Copiah County Tax Sale on September 21, 1981, and purchased the property for the outstanding taxes. (See Deposition Exhibit 6 — Receipt for Bid for Taxes at the Delinquent Tax Sale of Copiah County).

The statutory redemption period for property foreclosed against is two years from the date of sale and is defined by the Mississippi Code §27-45-3 — Who may redeem. Specificially the statute provides:

> §27-45-3 — WHO MAY REDEEM
>
> The owner, or any persons for him with his consent, or any person interested in the land sold for taxes, may redeem the same, or any part of it, where it is separable by legal subdivisions of not less than forty acres, or any undivided interest in it, at any time within two years after the date of sale, by paying to the chancery clerk, regardless of the amount of the purchaser's bid at the tax sale, the amount of all taxes for which the land was sold, with all costs incident to the sale, and five per centum damages on the amount of taxes for which the land was sold, and interest on all such taxes and costs at the rate of one per centum per month, or any fractional part thereof, from the date of such sale, and all taxes and costs that have accrued on the land since the sale, with interest thereon from the date such taxes shall

> have accrued, at the rate of one per centum per month, or any fractional part thereof, saving only to infants who have or may hereafter inherit or acquire land by will of persons of unsound mind whose land may be sold for taxes, the right to redeem the same within two years after attaining full age or being restored to sanity, from the state or any purchaser thereof, on the terms herein prescribed, and on their paying the value of any permanent improvements on the land made after the expiration of two years from the date of the sale of the lands for taxes. Upon such payment to the chancery clerk as hereinabove provided he shall execute to the person redeeming the land a release of all claim or title to the state or purchaser to such land, which said release shall be attested by the seal of the chancery clerk and shall be entitled to be recorded without acknowledgement, as deeds are recorded. Such release when so executed and attested shall operate as a quit claim on the part of the state or purchaser of any right or title under said tax sale.

The period of redemption for the property from the tax purchaser is two years from the date of the sale.

The statute identifies those individuals who have the right to redeem the property from the purchaser at the tax sale which are three specific classes of individuals: (1) the owner; (2) any person with the record owner's consent; and (3) any person interested in the land sold for taxes.

McMurry, as the"tax purchaser" of the subject property, was under a good faith belief that she was under a legal duty to pay the accruing annual taxes on the property during the two year statutory redemption period in order to preserve her right to be issued a tax deed after the redemption period expired and if the record owner did not redeem by paying the outstanding taxes that existed at the time of the sale. This belief in fact was based upon legal advice McMurry received from a local attorney when she consulted him regarding the procedure for obtaining a tax deed from the Chancery

Clerk. (See Deposition Exhibit 7). The exhibit shows that an Attorney Kemp advised McMurry that she should pay the accruing property taxes during the statutory redemption period and if no redemption occurred by its owner or other person property entitled, she was to go the Chancery Clerk's office after September 21, 1983, and demand a tax deed and record it.

Acting upon her belief and legal advice, McMurry went to the Copiah County Courthouse on January 4, 1982, with the intent and expressing the desire to pay the 1981 taxes on the property knowing that all property taxes in Mississippi had to be paid before February of each year.

This belief and advice to McMurry as to her duty to pay the accruing taxes during the two years redemption was not in fact without sound legal basis. The Mississippi Supreme Court in *Equity Services Co.* v. *Hamilton*, 257 So. 2d 201, ruled that a tax purchaser of property from a delinquent tax sale has a right to pay the annual property taxes that accrue during the two year statutory redemption period and any such payment cannot be interpreted as a voluntary payment for the record owner or party entitled to redeem.

The tax authorities requested the collected $104.96 from McMurry, the amount necessary to cover the costs of the outstanding taxes of 1980 or the amount paid at the taxes sale. This act was deliberate, intentional, and reckless on the part of the official and discriminatory with the purpose of divesting McMurry of her interests and the right to be issued a tax deed after September 21, 1983, as the tax purchaser. McMurry's proceeds were accepted as money for "repurchasing" or redeeming the subject property and she was issued a Release from Delinquent Tax Sale (See Deposition, Exhibit 8).

The Court should note that although the document does not contain the identity of the person that paid the "redemption costs," it is unequivocally clear that McMurry paid the fee for this release since Steven Amos, Tax Assessor and Collector,

testified in his deposition that the Release from delinquent Tax Sale does not contain the name of the person paying "redemption costs" as a usual course and he could not tell by looking at the specific release in question (Exhibit 8) who paid the "Redemption costs." (Exhibit 7a).

Furthermore, Mr. Amos in his answers to Plaintiff's interrogatories states in his answer to question #11 that the subject property was redeemed on behalf of the original owners on January 4, 1982, before the redemption period expired on September 21, 1983. (Exhibit 7b). McMurry's attempt and desire to pay the 1981 taxes was not a valid redemption under §27-45-3 because McMurry was not entitled to redeem the property under the statute because she was the tax purchaser of the property. The statute as hereto defined permits only three classes of people to redeem property from a tax sale: (1) the owner; (2) any persons with the record owner's consent; and (3) any person interested in the land sold for taxes.

The record owner of the subject property was Willie Williams Douglas. This is established by the person identified as such in the Notice of Tax Sale which offered the property for sale. Although Willie Williams Douglas died November 24, 1978, the property has always remained in her name as the title owner (See Deposition Exhibit 12). Even assuming that her heirs inherited the property, the title owner appeared to have never changed from Willie Williams Douglas. Nevertheless, McMurry did not inherit the property as heir or devisee of Willie Williams Douglas and therefore undisputedly did not seek to redeem it on behalf of the owners, particularly since she was the tax purchaser and by such an act would be divesting herself of her interest and right to a tax deed to the property in September, 1983. Further, it is obvious that McMurry did not have the consent of either Willie Williams Douglas or her heirs to redeem the property on their behalf since this property had been the subject of dispute between these very same parties for a long time.

McMurry therefore did not qualify to redeem the property as either an owner or with consent of the owner.

The third class of persons who may redeem property under Miss Code §27-45-3 from a tax sale are those that have an "interest in the property." Although this class appears to be broad and appears to include third parties, it has not been judicially interpreted as such. The United States Supreme Court established in a line of controlling cases, *DuBois* v. *Hepburn*, 10 pet. 1, 229 L. Ed 325; *Corbett* v. *Nutt*, Supreme Court 10 Wall, 464, 19 L. Ed. 977. that a state redemption statute that contains the provision allowing "persons with interest in property" to redeem means that individuals who have either a legal or equitable interest in the property may redeem the property from the tax Sale. There are two Circuit Court of Appeals decisions from the Sixth Circuit, *Hellems* v. *Roszel*, 256 Federal Reporter, 606 and the Fourth Circuit, *Begole* v. *Biglow*, 213 Federal Reporter 401 which have decided this precise issue of statutory construction of the state redemption statute and have ruled that the right of redemption may be exercised only by persons with an equitable or legal interest in the foreclosed property.

The United States Supreme Court in interpreting the redemption statute of the State of Pennsylvania observed in *Dubois* v. *Hepburn, supra*, 331:

> A law authorizing the redemption of land so sold, ought to receive a liberal and benign construction in favor of those whose estates will be otherwise divested, especially where the time allowed is short, an ample indemnity given to the purchaser, and a penalty is imposed on the owner. The purchaser suffers no loss; he buys with full knowledge that his title cannot be absolute for two years; if it is defeated by redemption, it reverts to the lawful proprietor. It would, therefore, seem not to be necessary for the purposes of justice, or to effectuate the objects of the law, that the right to redeem should be narrowed down by a strict construction. In this case, we are abundantly satisfied that it comports with the

> words and spirit of the law, to consider any person who has any interest in lands sold for taxes, as the owner thereof for the purposes of redemption. Any right, which is law or equity amounts to an ownership in the land; any right of entry upon it, to its possession, or enjoyment, or any part of it, which can be deemed an estate in it, makes the person the owner, so far as it is necessary, to give him the right to redeem.

Thus, this constitutional interpretation of the "any person with interest" provision of statutory redemption statutes has been translated to specifically include, mortgagees, lien creditors, joint owners of property. *Darrington* v. *Rose*, 90 So. 632; *Gatewood* v. *Roquemore*, 118 Pa. 2d, 1020.

Although McMurry's attempted payment of the accruing taxes for 1981 on January 4, 1982, at the courthouse was recklessly and intentionally applied as a redemption it did not constitute a valid redemption of the subject property since she was not entitled to redeem. The "redemption" on January 4, 1982, is void because the Supreme Court of Mississippi has ruled in a line of cases that where the Tax Office or Chancery Clerk has intentionally unintentionally allowed an improper transaction to occur in the statutory tax foreclosure process, that transaction is void with the effect of passing no statutory title that ordinarily flows from it. *Brannon* v. *Lyon*, 38 So. 609; *Seward* v. *Dogan*, 21 So. 2d 292; *Beauchamp* v. *McLaughlin*, 25 So. 2d 771; *Richton Tio & Timber Co.* v. *McWilliams*, 67 So. 2d 374; *Womack* v. *Central Lumber Co.*, 131 M. 201, 94 So. 2d; *McGhee* v. *Martin*, 53 M. 519; *Mead* v. *Day*, 54 M. 58; *Har-readee* v. *Clayton*, 56 M. 383; *Carter* v. *Moore*, 183 So. 519.

Applying this principle to the case at bar the "redemption" issued the tax puchaser, McMurry, on January 4, 1982, was in contravention of the statute and the United States Supreme Court precedent, (Mississippi Code §27-45-3 and *Dubois* v. *Hepburn, supra*,) both of which define who are entitled to redeem property from a tax foreclosure sale. The "redemption" on January 4, 1982, is void and passed no title to the owners of the property.

Consequently when the tax purchaser, McMurry, demanded a tax deed after the statutory redemption period expired on September 21, 1983, from the Tax Collector and Assessor, Steve Amos, and Chancery Clerk, Lawrence E. Hood, (Defendants) she should have been issued a tax deed which vests perfect title under §27-45-23 and the right of possession. (See Exhibit No. 7c). It was after tax purchaser was refused a tax deed after September 21, 1983, that she filed a suit in United States Federal Court for the litigation of this matter. Evidence that McMurry uncontrovertedly was the individual that was issued the Release from Tax Sale as a redeemer is established by the fact that she is in possession of an original carbon copy of Exhibit 8 and that a cash register receipt for the payment contains both the identical receipt No. 3972 and Release From Delinquent Tax Sale No. 060 that is inscribed, also on Exhibit 8 in the right hand corner of the document in the section entitled Tax Receipt No. and the extreme upper right hand corner of Exhibit 8. (Deposition Exhibit 1).

It is important to note that the subject property after 1983 was foreclosed against for delinquent tax for 1984 and auctioned again at a tax sale on August 26, 1985, and purchased by McMurry's mother (Amelia Williams) (Exhibit 13). Defendant testified that a white citizen, J. Cliff Thomas, Jr., was allowed to redeem the property on October 14, 1985, while the record owner for the property was still Willie Williams Douglas. (See Exhibits 19 and 19a).

It is important to note that Judge Barbour, in his Opinion and Order Granting Summary Judgment as to Count I — of the Complaint where Plaintiff sought title to the subject property, reasons that the redempton of January 4, 1982, was a valid redemption regardless of whether McMurry or any other person paid the "redemption costs." (P. 6 of Judge Barbour's Opinion). Judge Barbour's reasoning totally ignores the Mississippi Code §27-45-3 which defines the classes of people who are entitled to redeem property from a tax foreclosure sale and the United States Supreme Court case of *Dubois* v. *Hepburn, supra*. He further reasons that the effect

of *any person* paying the "redemption costs" is to vest title in the record owner. Therefore he reasons that although McMurry paid the "redemption costs" on January 4, 1982, the tax officials' acceptance and credit of her monies for this purpose resulted in a valid redemption which vests perfect title in the owners of the property.

Judge Barbour's reasoning not only ignores the statutory requirements of Mississippi Code §27-45-3 and Supreme Court precedent but further is inconsistent with the purpose of the redemption statute. The purpose of the redemption statute is to give the legal owner of the property a final opportunity to "repurchase" his property after it has been sold at a tax sale, since the "right of redemption" belongs exclusively to the legal owner after the tax sale or someone with an equitable interest in such property.

Therefore the proceeds applied to the "redemption costs" by the tax authorities and the Release From Tax Sale issued on January 4, 1982 was not valid since the tax purchaser offered to pay the accruing taxes for 1981 and she was not entitled to redeem under the Redemption Statute §27-45-3. Consequently no title passed to the legal owner as a result of such transaction and the tax purchaser's right to a tax deed was not cut off on September 21, 1983. Therefore Defendant was not entitled to Summary Judgment as to Count I of the Complaint.

ARGUMENT

B. THE PLAINTIFF'S COMPLAINT STATES A CIVIL RIGHTS CAUSE OF ACTION AGAINST THE PUBLIC OFFICIAL, THE CHANCERY CLERK, UNDER TITLE 42 §1982 BECAUSE IT SUBSTANTIALLY ALLEGES MORE THAN A MERE STATE STATUTORY VIOLATION BUT A SPECIFIC CONSTITUTIONAL DEPRIVATION AND FEDERAL STATUTORY VIOLATION RESULTING FROM THE VIOLATION.

Judge Barbour dismissed Count II of Plaintiff's complaint against the Chancery Clerk alleging civil rights violation under the Thirteenth Amendment of the United States Constitution and Title 42 §1982. Specifically, the count alleges that the Chancery Clerk, who under Mississippi law conducts the tax foreclosure sale of property for delinquent county taxes, violated Plaintiff's constitutional rights under §1982 to purchase and hold real property as a Black American. A cause of action may be dismissed for failure to state a claim only if it appears beyond a doubt that Plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Navarette* v. *Enomoto*, 536 F.2d 277.

Title 42 §1982 is a civil rights law that specifically sought to confer property rights upon non-white Americans. Section 1982 of Title 42 specifically provides:

> §1982. Property rights of citizens.
>
> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

This law was enacted to enforce the Thirteenth Amendment of the United States Constitution. The United States Supreme Court has interpreted §1982 as constitutionally barring all racial discrimination, private as well as public, in sale or

rental of property with the intent of guaranteeing all citizens the same right as is enjoyed by white citizens to purchase real property. *Jones* v. *Alfred H. Mayer Co.*, (1968) 392 U.S. 409, 20 L.Ed.2d 1189, 88 S.Ct. 2186. Damages allowable under a §1982 violation are the award of compensatory damages for humiliation suffered by Plaintiff as a result of racial discrimination (*Seaton* v. *Sky Realty Co.*, 491 F.2d 634); punitive damages (*Lee* v. *Southern Home Sites Corp.*, 444 F.2d 143) and award of attorney fees (*Knight* v. *Amcielli*, 453 F.2d 852).

Count II alleges essentially that the wrongful refusal of the Chancery Clerk to issue a tax deed to Plaintiff after the statutory redemption period expired on September 21, 1983, was a violation of her constitutional right under the Thirteenth Amendment of the United States Constitution as interpreted by Title 42 §1982.

However, under the same factual allegations, Plaintiff's complaint also makes a claim under §1983. Title 42 §1983 gives an individual a civil cause of action against any "person" who, while acting under an official governmental office, violates a constitutional right of the Plaintiff.

Specifically §1983 provides:

> §1983. Civil action for deprivation of rights.
>
> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress. For the purpose of this section, any act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

The United States Supreme Court has interpreted §1983 as providing a remedy to parties deprived of constitutional rights, privileges, immunities by an official's abuse of his position. *Monroe* v. *Pape*, 365 U.S. 167, 5 L.Ed.2d 492, 81 S.Ct. 473 (1961). Further 42 U.S.C.S. §1983 is available to redress deprivations under color of state law of rights, privileges, and immunity secured by federal statutes as well as by Constitution. *La Raza Unida* v. *Volpe*, 440 F.Supp. 904 (N.D. Cal. 1977). To establish a cause of action under 1983 two elements must be established: (1) Plaintiff must prove that Defendant has deprived him of right secured by "Constitution and Laws" of the United States; (2) that Defendant deprived him of this constitutional right "under color of law." *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 26 L.Ed.2d 142, 90 S.Ct. §1598.

The factual allegations of the count asserts essentially that the Chancery Clerk, a county official, wrongfully refused to issue Plaintiff a tax deed after the statutory redemption expired on September 21, 1983, violating her constitutional rights under the Thirteenth Amendment and Title 42 §1981. These factual allegations state a cause of action under §1983 and entitles Plaintiff to relief under 1983 which has been determined to include compensatory damages, *Carey* v. *Piphus*, 435 U.S. 247, 55 L.Ed.2d 252, 98 S.Ct. 1042 (1978); punitive damages where constitutional rights are maliciously violated but victim cannot prove compensable injury, *Carlson* v. *Green*, 446 U.S. 14, 64 L.Ed.2d 15; 100 S.Ct. 1468 (1980); attorney fees, *Main* v. *Thiboutot*, 448 U.S. 1, 65 L.Ed.2d 555, 100 S.Ct. §2502 (1980).

Judge Barbour specifically argues in his Opinion that Plaintiff is not entitled to maintain an action under §1983 because the violation relates to the allegation that the state official failed to follow a state statutory duty. He concludes that such allegations are not sufficient to state a civil rights violation under §1983 citing two cases for authority, *Marin* v. *Blackburn*, 581 F.2d 94 (5th Cir. 1978) (per curiam), (quoting *Shield* v. *Hupper*, 519 F.2d 1342 (5th Cir. 1971), cert. denied

410 U.S. 943 (1973) and *McDowell* v. *Texas*, 465 F. 2 1342. The two cases cited by Judge Barbour are factually distinguishable from the case at bar and are not applicable. In *McDowell* v. *State of Texas*, a state employee of Texas sued on grounds of a civil rights violation under §1983 on the theory that his termination by the state was motivated by *political considerations* in contravention of state law. The Court dismissed the complaint on the grounds that Mr. McDowell, Plaintiff, failed to allege a specific constitutional right resulting from his termination of the employment by the state in an employment contract at will. Thus, the court observed in explaining why Plaintiff's complaint did not state a cause of action under §1983.

> There is no claim that Dr. McDowell has been denied First Amendment rights, nor that he has suffered any deprivation on account of race or color, nor that any explicit *federal constitutional* or *statutory prohibition* has been transgressed. . .
>
> The termination of Dr. McDowell's status as a state employee rests solely on a claim that his employers violated state statutes and local policies in effecting his termination. The right for employment by a State, in itself, is not a right secured by the Constitution or by the laws of the United States; thus, even an office, unaccompanied by some more precise claim of federal right than a general claim of lack of due process [substantial] is not the sort of deprivations of a right, privilege or immunity which is secured by the Constitution of the United States or an Act of Congress providing for equal rights of citizens within the meaning of 28 U.S.C.A. §1343(3). *McDowell* v. *State of Texas*, supra, 1345.

Thus, the case stands for the proposition that a violation of state statute without that violation infringing upon a United States constitutional right or federal statutory right does not constitute a cause of action under Title 42 §1983.

In the case at bar, Plaintiff not only alleges that a state statutory law was violated by a state official but the violation

of the statute violated both her constitutional right under the Thirteenth Amendment and a federal statutory right under §1982. In other words, because the Chancery Clerk, county official, failed to issue Plaintiff a tax deed after the statutory redemption period expired in accord with Mississippi Code §27-45-23, Plaintiff was denied her constitutional right under the Thirteenth Amendment and Title 42 §1982 right to purchase property as a non-white citizen.

Thus, because Plaintiff's complaint clearly avers more than merely that state officials have failed to follow state law, it states a cause of action under §1983 since she avers that both a United States constitutional right under the Thirteenth Amendment and a federal statutory right §1982 under Title 42 have been violated. Thus the factual allegations stated in Count II of Plaintiff's complaint are sufficient to state a valid claim for the deprivation of civil rights and thus should not have been dismissed by the trial court.

Judge Barbour notes in footnote No. 3 of his Opinion on page 6 that the Defendant Amos was not the Chancery Clerk at the time the tax deed was sought. Although Amos was not the Chancery Clerk at the time the deed was initially sought after September 21, 1983, Mr. Amos was involved in the deprivation of Plaintiff's constitutional right under the Thirteenth Amendment and §1982 of Title 42 since he was the Tax Assessor and Collector at the time of the foreclosure sale of the subject property. Further, the record shows that Defendant Amos has been involved in the problem since he has been consulted by plaintiff as to her right to be issued a tax deed since 1983. The record will reflect that Defendant Amos was in possession of knowledge of the status of the property as the Tax Collector and Assessor and as the one who conducted the foreclosure sale on September 21, 1981. Demands for the tax deed have been made upon Amos since he has assumed the Chancery Clerk's office with no favorable response. Case law establishes that an individual who personally participates in the deprivation of a constitutional right is subject to liability under the Civil Rights Act of

1871. *Nugent* v. *Sheppard*, 318 F.Supp. 314; *Lathon* v. *Parish of Jefferson*, 357 F.Supp. 58; *Brunson* v. *Hyatt*, 409 F.Supp. 35; *Classon* v. *Shopko Stores, Inc.*, 435 F.Supp. 1186. The record is replete with testimony where Plaintiff has over the past six years demanded a tax deed to the subject property from Defendant's Amos in his capacity as both the Tax Collector and Chancery Clerk of Copiah County. He has been directly involved in the refusal of the county to issue Plaintiff a tax deed.

ARGUMENT

C. THAT A GOVERNMENTAL ENTITY IS LIABLE AND IS NOT IMMUNE TO SUIT FOR CIVIL RIGHTS VIOLATION UNDER §1982 OF TITLE 42 AND THE THIRTEENTH AMENDMENT.

The trial judge dismissed Count III of Plaintiff's complaint which alleges the county governmental entity, the Copiah County Board of Supervisors, liable for the violation of Plaintiff's civil rights under §1982 of Title 42. Judge Barbour's dismissal of this count was based on the grounds that a governmental entity or municipality cannot be sued on a respondent superior theory for the violation of a person's civil rights under §1983.

While it is clear that there is limited immunity against governmental entities under §1983 and that no such action can be maintained on a respondent superior theory because the United States Supreme Court has determined that actions under §1983 are limited against individuals, the trial court's total reading of Count III would dictate that the Plaintiff has properly stated a cause of action for civil rights violation against the governmental entity, Board of Supervisors of Copiah County, based on a violation of Title 42 §1982 and is entitled to relief for damages under this section.

Admittedly the prayer for relief of Count III asks for relief under §1983 but the substantive allegations of the paragraphs of the count state the Plaintiff's property right to purchase property under §1982 and the Thirteenth Amendment was violated when the Chancery Clerk refused to issue her a tax deed after the two year statutory redemption period expired on September 21, 1983.

The standard the trial court must apply in dismissing an action for failure to state a claim requires that it appears beyond a doubt that Plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley* v. *Gibson*, 355 U.S. 41, 45–46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957). Although Count III's prayer for relief asks for damages under §1983, the factual allegations state a cognizable claim of a civil rights violation under §1982 and is entitled to relief for damages under §1982.

A Circuit Court of Appeals case that supports Plaintiff's position is *Baker* v. *F & F Investment Company, Federal Housing Administration et.al.*, 489 F.2d 829 (1973). In this case the governmental Defendants moved for a motion to dismiss for failure to state a cause of action under Title 42 §1981 on the grounds that public entities are immune from being sued under the Civil Rights Statute of 1866 because the government is immune from suit under §1983. The trial court rejected Defendant's argument and denied the motion and the Seventh Circuit Court of Appeals affirmed the trial court's decision. The Court of Appeals in affirming the lower court's ruling observed in *Baker* v. *F & F Investment Co.*, supra, 834:

> If the Government's theory is based on the view that no government agency, however high, is authorized to commit illegal acts, it is even weaker. Such a theory would mean that government instrumentalities, which can act only through their agents, would never be liable in tort. Yet "It is well settled that the authority to sue and be sued contained in the charter of a governmental corporation includes suits in tort." *B.C. Morton International Corp.* v. *Federal Deposit Insurance Corp.*, 305 F.2d 692, 694–695, n.2 (1st. Cir. 1962).

> We conclude that even if the conduct were authorized neither by law nor by high officials; these instrumentalities cannot escape liability under the sue and be sued clauses. Thus in *Keifer & Keifer v. Reconstruction Finance Corp.*, 306 U.S. 381, 59 S.Ct. 526, 83 L.Ed. 784, the Defendant had not authorized its agents to damage Plaintiff's livestock and was nonetheless held suable for damages in tort . . . We approved in *Goutreout* v. *Roumell*, 448 F.2d 731 (7th Cir. 1971), where we held that sovereign immunity does not bar a suit which is challenging alleged unauthorized unconstitutional conduct by a federal officer.

In the above-cited case, the Plaintiff brought suit against the Defendant real estate agents and the federal financing agents for violation of §1981, 1982 and Thirteenth Amendment rights.

A case that further supports Plaintiff's position and tends to be more on point is *Maybanks* v. *Ingham*, et.al., 378 F.Supp. 913 (1947). In this case a city employee of the public Health Department of the City of Philadelphia filed suit against the city and others alleging that dismissal was for racially discriminatory reasons in violation of Civil Rights Act of 1866, §1981 and Civil Rights Act of 1877, §1983. The trial court dismissed the action as to the city under §1983 on grounds that the city is not a "person" within the meaning of 1983. However, the court denied the motion for the City of Philadelphia to dismiss it from the action on the basis of immunity from §1981. The court in holding that Plaintiff had stated a cause of action under Civil Rights Act of 1866, §1981 reasoned as follows:

> The applicability of §1981 to municipalities has been sparsely dealt with by courts . . .
>
> The Defendant City relies on its immunity to suit under §1983 to answer Plaintiff's allegation of §1981 liability. This is no answer. In the first place, the word "person" which in §1983 has been held conclusively not to apply

> to municipalities, appears in §1981 only to describe those who are *protected* by the statute, not those who are proscribed from its violation. In the second place, the scope and application of §1981 is vastly different from that of §1983; one essential difference is that §1981, like §1982, is based on and intended to enforce the Thirteenth Amendment, and applies, therefore, to actions against private persons as well as those acting under color of law . . .
>
> Consequently we hold that Plaintiff has stated a cause of action under §1981 against the City of Philadelphia for all the relief requested . . . (*Maybanks* v. *Ingraham*, supra, 916, 918)

The District Court in *Maybanks, supra*, like the Court of Appeals in *Baker, supra*, ruled that governmental entities are proper Defendants in civil rights actions under §1981 and §1982 of the Civil Rights Acts of 1866 although they are immune from actions under §1983.

In *Jose Chavez-Salide, et.al.* v. *Clarence E. Cabell*, v. *Clarence E. Cabell, et.al.*, 427 F.Supp. 158 (1979), the United States District Court of California ruled that actions under Civil Rights Act of 1866 could be maintained against political subdivisions of states under §1981 and §1982. In this suit Plaintiffs brought action against the County Chief Personnel Officer and Los Angeles County for discriminatory employment practices that violated his Title 42 §1981 right to enter contracts under the Thirteenth Amendment. The Defendant, County, argued that as a political subdivision, it was not suable under §1981 and therefore the Plaintiff failed to state a cognizable claim against it under §1981. The District Court held that the complaint states a cognizable claim against the county under §1981. The court in ruling that the county was suable under §1981 reasoned as follows:

> As the Supreme Court points out in Monroe, the legislative history of §1983 and the use of the term "person" therein, preclude its application to political subdivisions. But a careful examination of the legislative history

> of §1981 and §1982 establishes, we think, with equal clarity, that political subdivisions were intended to be included within their ambit.
>
> • • • •

The Supreme Court, post-Arunga, has said analyzing §1982:

> "[L]ike the Amendment upon which it is based, §1982 is not a 'mere prohibition of State laws establishing and upholding' racial discrimination in the sale and rental of property, but rather [is], an 'absolute' bar to all such discrimination, private as well as public, federal as well as state." *District of Columbia* v. *Carter*, 409 U.S. 418, 422, 93 S.Ct. 602, 605, 34 L.Ed.2d 613 (1974).
>
> We read this language as an affirmation that all sources of discrimination, including governmental entities, are reachable under §1982.
>
> Because they are companion sections, having a common derivation and legislative history, it would appear that what applies to §1982 applies with equal force to §1981 . . . (*Chavez-Salido* v. *Cabell, supra*, 164–165.)

Thus courts have held that governmental entities are liable and proper Defendants under Title 42 §1982.

Judge Barbour reasons that the case of *Monnell* v. *Department of Social Services of City of New York*, 436 U.S. 658 (1978) extends immunity to the county governmental entity, the Board of Supervisors, in this case and further that the Chancery Clerk is not an agent of the Board of Supervisors. The weakness of Judge Barbour's argument is that (1) *Monnell* v. *Department of Social Services of City of New York, supra*, applies *only* to §1983 actions, since the statute expressly applies to "persons" and the municipalities are not "persons", and (2) the Mississippi Constitution, Article 6, §176 of the Mississippi Constitution provides that the Chancery Clerk *shall* be the Clerk of the Board of Supervisors and he has certain statutory express duties to perform for the Board

respecting the properties to be foreclosed against for delinquent county property taxes.

ARGUMENT

D. PLAINTIFF'S COMPLAINT STATES A CIVIL RIGHTS CAUSE OF ACTION AGAINST THE CITY TAX COLLECTOR OF CRYSTAL SPRINGS, MISS., IN COUNT VI BECAUSE IT SUBSTANTIALLY ALLEGES MORE THAT A MERE STATE STATUTORY VIOLATION BUT A SPECIFIC CONSTITUTIONAL AND FEDERAL STATUTORY VIOLATION RESULTING FROM THE VIOLATION.

Judge Barbour dismissed Court VI against the City Tax Collector, Erma Lewis, of the City of Crystal Springs, Mississippi for the wrongful constitutional deprivation of property under the Title 1982. Judge Barbour uses the same argument as in Count II that a civil rights claim is not sufficiently stated where it is based only on an allegation that a state statute is violated citing *Martin, supra*. Here as before on Count II against the Chancery Clerk, the allegation states not only that a state statutory violation occurred when the City Tax Collector foreclosed against the subject property but that the violation resulted in a specific constitutional and federal statutory right, the Thirteenth Amendment and Title 42 §1982. The cases that Judge Barbour cites as his authority for dismissal is distinguishable from the case at bar because the former involve situations where Plaintiff's complaints while alleging a state statutory violation did not identify a specific constitutional or federal statutory right violated as a result of the former. Here in Count VI Plaintiff specifically alleges that the Thirteenth Amendment and Title 42 §1982 were violated as a result of the City Tax Collector's improper foreclosure against the subject property. Thus the factual allegations stated in Count VI of Plaintiff's complaint are sufficient to state a valid claim for the deprivation of civil rights and thus should not have been dismissed.

CONCLUSION

For the foregoing reasons, the petitioner contends that she has been unjustly denied her property and has been subjected to the violation of certain constitutional rights and civil rights. This results from the ruling of the lower United States District Court and the Fifth Circuit Court of Appeals. Accordingly, petitioner prays that her petition for Certiorari be granted.

Respectfully submitted,

Flossie Williams McMurry

FLOSSIE WILLIAMS McMURRY,
Petitioner

By Flossie Williams McMurry, Per
Pro Per

FLOSSIE WILLIAMS McMURRY, Per
Pro Per
1321 E. Larned St. #201
Detroit, Michigan 48207
(313) 393-0143

APPENDIX "A"
EXHIBITS

Exhibit 8

A Flossie Wiliams McMurry.

Q Now you can't look at document 8 and tell who paid these taxes?

A No, I cannot, huh-uh. The actual person who redeemed them, no, I do not.

Q Would the person who redeemed the property, would they typically have their name on this document?

A No, not unless they wanted it on it. Now this is Mr. Hood's work here. He has got "receipt of Willie Williams Douglas" here. That might have been the person that come in and paid for it, I don't know. And it was assessed to Willie Williams Douglas, also. If you wanted your name put on it, I would write your name on it. Mr. Hood would have, also, as to the individual who actually redeemed it. Say you might have been his son, you know, they would have put it on there if you had wanted it on there.

Q Exhibit 1, is this a receipt that could have been issued by your office?

A I don't think so. Well, I know it's not because my office, somebody's got to sign it before I am going to actually state that it's been a receipt. No one signed it from that office. And

City Hall, and not at the Chancery Courthouse, Hazlehurst, Mississippi.

RESPONSE: These defendants are not involved in tax sales by Crystal Springs for delinquent city taxes.

9. Was the property at 106 Forest Street, Crystal Springs, Mississippi, offered for auction by the Chancery Clerk of Copiah County for delinquent taxes on September 21, 1981?

RESPONSE: No. Any such tax sale is handled by the Tax Collector and not the Chancery Clerk.

10. Who were the purchasers of the said property at the tax sale on September 21, 1981?

RESPONSE: According to records, the purchaser of the property at the tax sale on September 21, 1981 was Mrs. Flossie B. Williams McMurray, although it is possible that someone purchased it for her.

11. Was the said property redeemed by its original owners between September 21, 1981 and September 21, 1983?

RESPONSE: The property was redeemed on behalf of the original owners on January 4, 1982.

12. What official is authorized to issue tax deeds on foreclosed property?

RESPONSE: Chancery Clerk.

13. Who was the Chancery Clerk of Copiah County on September 21, 1983?

Exhibit 7c

LAW OFFICES OF CARROLL RHODES
ATTORNEY AND COUNSELLOR AT LAW

Post Office Box 588
Kemp Building
132 Green Street
Hazlehurst, Mississippi 39083

Telephone
(601) 894-4323

January 4, 1984

Mrs. Flossie B. Williams McMurray
1321 East Larned, Apt. 201
Detroit, Michigan 48207

Dear Mrs. McMurray:

I have checked with the City of Crystal Springs Clerk's Office concerning issuing a Tax Deed to you on the Willie Williams Douglas Property, located at Part Lot 34, North Ext. Subdivision, Crystal Springs, Mississippi. Upon first glance, it appeared as if the City of Crystal Springs had overlooked issuing you a tax deed for the property. I had argued that you had paid the city taxes at a tax sale held in September, 1981. The taxes had been paid on September 11, 1981. However, the tax sale was not held until September 21, 1981. Therefore, a tax deed could not be issued to you.

In order to have a tax deed issued in your name, you must buy the property (usually for the costs of the taxes and interest accumulated) at a bona fide tax sale. Tax sales are usually held in September of every year. However, the tax sales usually will be for only one day in the month of September of any given year. Since you had purchased the property (by paying the taxes in 1981) prior to the date of the tax sale, the tax sale would not be valid.

The taxes for 1984 have already been paid. Therefore, you will not be able to purchase the property at a tax sale in 1985. The 1985 taxes will be due in January, 1986. However, if you wait until the date of the tax sale in September,

1986 to pay the taxes and interests in your name. Otherwise, if you wait until the date of the tax sale to purchase the property, and if those taxes are not redeemed by an heir of Mrs. Willie Williams Douglas within three years, then 3 years from the date of the tax sale in which you purchased the property, a tax deed will be issued to you. In other words, if you purchase the property at a tax sale in 1986, a tax deed will be issued to you in 1989, provided the taxes have not been redeemed by then.

If you have any questions, please do not hesitate to ask.

Sincerely,

/s/ CARROLL RHODES

Carroll Rhodes

to tell us what that is?

A That is a release from delinquent tax sale.

Q This release from delinquent tax sale, is that in regards to the sale to Amelia Williams which is exhibit 13?

A I can't read it. But I have seen the original of it, and it does, yes.

Q So in other words, what happened back in '81 happened again in '85?

A 84.

Q Well, for '84 taxes?

A That's correct.

Q In '85 for '84 taxes?

A That's correct.

Q Does document 19, the release from delinquent tax sale, show who paid those taxes?

A Again, I can't read it, but I know who paid it because it does up here—it is Cliff Thomas, Junior, that is who it is. That is who paid the taxes, actually went over there and delivered the check or the money.

(Off the record briefly.)

Q Now your counsel made reference to a missing document which was a release from

APPENDIX "B"

JUDGMENT OF FIFTH CIRCUIT COURT OF APPEALS

In The United States Court of Appeals For The Fifth Circuit

No. 89-4762
Summary Calendar

FLOSSIE WILLIAMS MCMURRAY,
Plaintiff-Appellant,

versus

STEVEN AMOS, TAX COLLECTOR AND ASSESSOR, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Mississippi (J88 0238(B))

(April 24, 1990)

Before REAVLEY, KING, and JOHNSON, Circuit Judges.

PER CURIAM:*

AFFIRMED: See Local Rule 47.6.

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

APPENDIX "C"

JUDGMENT AND OPINION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

FLOSSIE WILLIAMS MCMURRAY
Plaintiff

vs. Civil Action No. J88-0238(B)

STEVEN AMOS, Chancery Clerk,
Copia County, Mississippi,
Board of Supervisors, Copiah County,
Mississippi, ERMA D. LEWIS,Tax Collector
for the City of Crystal Springs, Mississippi,
MINNIE BELL LEVI, FLOSSIE BELTON WILLIAMS,
Jointly and Severally
Defendants

MEMORANDUM OPINION AND ORDER

This cause is before the Court on the Motion of Defendants Steven Amos, the Chancery Clerk of Copiah County, Mississippi, and the Board of Supervisors of Copiah County for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Plaintiff Flossie Williams McMurray has responded to this Motion.The Court has considered the memorandum of authorities together with attachments submitted by the parties.

This Court is now presented with the fourth lawsuit arising from the long-standing family dispute over a piece of real property located in Crystal Springs, Mississippi. The facts surrounding the line of ownership of the subject property is basically undisputed. On June 14, 1977, Mrs.Willie Williams Douglas executed a Warranty Deed, conveying the subject property to Plaintiff McMurray. On January 31, 1979, the Chancery Court for Copiah County, in response to a lawsuit filed by, *inter alia*, Defendants Levi and Williams, entered an Order rescinding the deed on the basis of undue

influence exerted by McMurray on the ailing Douglas. On July 30, 1980, the Mississippi Supreme Court affirmed the lower court's order in a per curiam opinion.[1] Due to delinquent taxes, the property was sold at a tax sale on September 21, 1981, to McMurray or someone on her behalf. On January 4, 1982, the delinquent taxes, penalties and costs were paid on the property. Though the record of the release from the tax sale showed payment by Douglas, she had died in 1979. McMurray admits that it was she who paid the back taxes and, therefore, she claims that the property was not redeemed for purposes of Miss. Code Ann. § 27-45-34 (1972), which allows for redemption of property sold at tax sale within two years of the sale.

This is the third action filed by Plaintiff McMurray, the second before this Court. The issue at the heart of this case, as well as all the past actions filed by McMurray, is whether she was wrongfully deprived of a tax deed to the subject property. In 1985, this Plaintiff filed an action in this Court: *McMurray* v. *Edwin L. Pittman* and *Minnie Bell Levi*, Civil Action No. J85-0819(B). This Court issued an opinion on June 10, 1987, dismissing Pittman and the State of Mississippi from that action which was brought pursuant to 42 U.S.C. §§ 1979, 1982, 1983 and 1984, alleging wrongful deprivation of the tax deed and raising the identical issues as the instant suit. There, this Court found not only that the attorney general and the State were immune from suit under the Eleventh Amendment of the United States Constitution but that *since there had been no final tax sale in the case, no wrongful deprivation of a tax deed had occurred*. The Court quoted the brief of those defendants:

> The Plaintiff's mistaken belief that by beating the legal owners to the tax collector annually she would vest herself with title, ironically, may have helped to obviate the very result she was hoping for. Property does not become purchaseable at tax sale until taxes have become sufficiently deliquent: a condition her payments prevented.

---

[1] *McMurray* v. *Douglas*, 385 So.2d 1306 (Miss. 1980).

This Court there held that Plaintiff McMurray had presented no constitutional or statutory rights which could have been violated by those defendants under the stated circumstances.[2] The instant complaint is predicated on the same transaction. The same reasoning regarding the tax sale would apply here. Even though Plaintiff has sued different defendants under varying state and constitutional bases, the foundation of all the claims is still the subject tax sale transaction. Additionally, the Mississippi Supreme Court has affirmed the Chancery Court rescission of the deed executed by the original owner in Plaintiff's favor. Thus, the highest court in the State of Mississippi as well as this Court has recognized that Plaintiff McMurray has absolutely no interest in the subject property. Without any interest in the property, the claims forwarded in the instant complaint, like those in the prior action, are groundless. And, since the necessary foundation of each claim in this lawsuit does not exist, these claims are frivolous and totally devoid of merit. This lawsuit is properly dismissed on these grounds alone.

However, because the Court is of the opinion that Plaintiff McMurray must finally accept the reality of this matter, the Court shall go to extra lengths today to fully explain the lack of merit in each of the allegations set forth in her complaint, as follows.

QUIET TITLE

Plaintiff McMurray seeks to have the title to the subject property quieted in her favor. It is elementary in suits of this nature that the complainant has the burden of showing perfect title in herself. *Culbertson* v. *Dixie Oil Co.*, 467 So.2d 952, 954-55 (Miss. 1985) (citing *Nicholson* v. *Myres*, 170 Miss. 441, 154 So. 282 (1934)). Though this Court has already reaffirmed its prior finding on this issue, the reasons for this decision are set forth here in full for absolute clarity.

---

[2] The remaining defendants were dismissed without prejudice for failure of the plaintiff to show cause for failure to serve process on them.

When McMurray purchased the property at the tax sale in 1981, she acquired a perfect title in the property but

> . . . without the right of possession for the period of and *subject to the right of redemption*.

Miss.Code Ann. §§ 27-41-79 and 81 (1972) (emphasis added). The amount paid by her as the purchaser at a tax sale, operated as

> a lien on the land in favor of the purchaser and the holder of the legal title under him, by descent or purchase, if the taxes for which the land was sold were due.

Miss. Code Ann. § 27-45-27. This lien is extinguished where the owner of the property pays the delinquent taxes within a two-year period

> The owner, or any persons for him with his consent, or any person interested in the land sold for taxes, may redeem the same, or any part of it . . . at any time within two years after the day of sale, by paying into the chancery clerk, regardless of the amount of the purchaser's bid at the tax sale, the amount of all taxes for which the land was sold. . . . Upon such payment to the chancery clerk . . . , he shall execute to the person redeeming the land *a release of all claim or title of the . . . purchaser to such land*. . . . Said release when so executed and attested shall operate as a quitclaim on the part of the . . . purchaser of any right or title under said tax sale.

Miss. Code Ann.§ 27-45-3 (emphasis added). Once the delinquent taxes are paid within the two-year period, redemption has occurred and the chancery clerk is directed to settle with the purchaser:

> . . . Where the land was sold to an individual, the clerk shall pay over first [to the state the amount of taxes and then to the county the amount of county taxes due] insofar as said items have not already been paid, either by the tax purchaser or by some other person, and the balance he shall pay over to the purchaser. . . .

Miss. Code Ann. § 27-45-1. The chancery clerk is required to execute a deed in the tax purchaser's favor *only* where no redemption of the property has occurred:

> When the period of redemption has expired, the chancery clerk shall, on demand, execute the deeds of conveyance to individuals purchasing lands at tax sales. . . .

Miss. Code Ann. § 27-45-23.

Under the circumstances at hand, there was a valid redemption, as proven by the release from the delinquent tax sale. The Court must once again refer to its previous holding in this matter: whether Plaintiff McMurray paid the taxes herself or not, a redemption did occur under the laws of the State of Mississippi. Therefore, Plaintiff cannot, under the laws of this state, bring an action to quiet title on property of which she has no perfect title. She does not now possess nor has she in the past possessed suich title to the subject property. Therefore, the state law claim to quiet title is totally without merit and should be dismissed.

CIVIL RIGHTS VIOLATIONS

Chancery Clerk

Plaintiff seeks relief for violation of her civil rights under § 1983 as against Defendant Amos.[3] Again, she bases her allegation on the allegedly wrongful refusal of the clerk to issue a tax deed in her favor after the two year redemption period expired. The Court has already established that no such wrongful deprivation occurred inasmuch as the redemption, however inadvertent that it may have been, was valid. Nevertheless, Plaintiff here argues against the propriety of the clerk acting in accordance with the Mississippi law. Clearly the statutes set forth above provide a standard procedure which the clerk must follow in the case of a tax sale and

[3] The complaint mentions §§ 1981 and 1982, but she specifically states a prayer for relief pursuant to § 1983. Also worthy of note is the fact that Defendant Amos was not the clerk at the time the tax deed was sought.

subsequent redemption. Even if the clerk was accused of failing to follow these procedures, such a failure to follow the "procedural provisions of state law, without more, does not aver a cause of action under § 1983." *Marin* v. *Blackburn*, 581 F.2d 94 (5th Cir. 1978) (per curiam) (quoting *Shield* v. *Hopper*, 519 F.2d 1131, 1132 (5th Cir. 1975)). *See also McDowell* v. *Texas*, 465 F.2d 1342 (5th Cir. 1971), *cert. denied* 410 U.S. 943 (1973). Plaintiff has no legally cognizable claim against Defendant Steven Amos as the Chancery Clerk of Copiah County.

Board of Supervisors

Plaintiff alleges that the Board of Supervisors, through its agent, the Chancery Clerk of Copiah County, violated her constitutional rights. If the rights claimed did exist, Plaintiff would still have no legal claim against this public entity under these circumstances. It is a well-established standard of law that no such entity can be held liable for a violation of civil rights on a respondeat superior theory. *Monnell* v. *Department of Social Services of City of New York*, 436 U.S. 658 (1978). Furthermore, while Article 6, §170 of the Mississippi Constitution provides that the chancery clerk shall be the clerk of the board of supervisors, there is no statutory authority, precedent or other rule which establishes any control of the chancery clerk's office to be in the hands of the county board of supervisors much less any agency relationship between the two. The chancery clerk, like the supervisory positions which make up the Board, is an elected office in the State of Mississippi, as provided by Miss. Code Ann. §23-5-93. Upon his oath of office, the chancery clerk is to perform the duties required of him by law under Miss. Code Ann. § 9 5-131 through 173. The board of supervisors is in no way responsible for the actions of the chancery clerk. Therefore, in all aspects, this claim is totally baseless.

Levi and Williams

Plaintiff alleges that Defendants Minnie Bell Levi and Flossie Belton Williams wrongfully deprived her of the subject prop-

erty by violating her due process rights under the Fourteenth Amendment. McMurray contends that in the 1978 chancery court action, in which Levi and Williams were plaintiffs, improper evidence was admitted and she received ineffective assistance of counsel. These allegations amount to a collateral attack of that prior action, the results of which was affirmed by the Mississippi Supreme Court. These facts simply cannot give rise to a constitutional claim against these parties. And, even if they somehow did, the complained of activity of these defendants was "private conduct, 'however discriminatory or wrongful,' against which the Fourteenth Amendment offers no shield." *Lugar* v. *Edmondson Oil Co.*, 457 U.S. 992, 936 (1982) (quoting *Jackson* v. *Metropolitan Edison Co.*, 419 U.S. 345 (1974)). Therefore, the facts as alleged by Plaintiff offer positively no constitutional grounds upon which the defendants may be held liable.

Tax Collector

Plaintiff cites a violation of §§ 1981 and 1982 in the alleged wrongful foreclosure on the subject property for delinquent city taxes instituted by Defendant Erma Lewis as Tax Collector for the City of Crystal Springs in 1986. Once again, Plaintiff is attempting to make a civil rights violation out of an alleged failure of a public official to properly follow state procedure. This type of alleged wrong is not subject to scrutiny under the civil rights act. *Martin*, 581 F.2d 94. This cause of action is meritless.

RULE 11 SANCTIONS

Defendants Amos and the Board of Supervisors seek an imposition of sanctions in this matter. Rule 11 of the Federal Rules of Civil Procedure provides that:

> [t]he signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's

> knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

Compliance with Rule 11 is measured by an objective, not a subjective, standard of reasonableness under the circumstances. *Thomas* v. *Capital Securities Services, Inc.*, 836 F.2d 866, 873 (5th Cir. 1988) (citing *Robinson* v. *National Cash Register Co.*, 808 F.2d 1119, 1127 (5th Cir. 1987) and *Davis* v. *Veslan Enterprises*, 765 F.2d 494, 497 (5th Cir. 1985)). The plain language of the rule requires the imposition of sanctions once a violation is established. *Thomas*, 836 F.2d at 876. However, once such violation is shown, the district court has broad discretion in choosing the proper penalty. *Id.* at 876-77.

Rule 11 imposes several affirmative duties upon an attorney or litigant:

(1) that the attorney has conducted a reasonable inquiry into the facts which support the document;

(2) that the attorney has conducted a reasonable inquiry into the law such that the document embodies existing legal principles or a good faith argument "for extension, modification, or reversal of existing law;" and

(3) that the motion is not interposed for purposes of delay, harassment, or increasing costs of litigation.

The Fifth Circuit has held that these duties must be complied with at the time the documents were signed. *Id.* at 874-75. Our circuit does not require specific findings and conclusions on these requirements of Rule 11 if the record for appellate review justifies sanctions in that the violation is apparent on the record and the basis and justification for sanctions is readily discernible. *Id.* at 882-83. Though this Court believes that the foregoing discussion regarding the total lack of merit of this action is ample justification for imposition of sanctions against Plaintiff McMurray, specific findings are, nevertheless, set forth as follows.

At the time this lawsuit was instituted, Plaintiff McMurray had been involved in litigation involving the subject property for over eight years. She had full knowledge of the prior decision of this Court as to the lack of any legal foundation for any federal claim regarding the alleged wrongful deprivation of the subject property.[4] This court finds that Plaintiff McMurray has continued her quest to gain property to which she never had legal title with full knowledge of the lack of merit of her claim and with the probable purpose of harassment. Though the Court does recognize that the subject property may have been redeemed inadvertently in 1982, the Court is not presented with a question of constitutionality of the state statutes under which the events of the tax sale and redemption are controlled.

The Court feels that the total lack of merit of each of the claims raised in the instant complaint justifies the imposition of Rule 11 sanctions against Plaintiff in the total amount of attorney's fees, costs and expenses incurred by the answering Defendants. The Court shall order counsel for Defendants Steven Amos and the Board of Supervisors of Copiah County to submit to the Court a complete and detailed itemization

[4] The Court notes that McMurray claims to have some educational background in the law, having studied briefly at the Detroit Institute of Technology. *See* McMurray desposition, pp. 38-40. Thus, the Court believes that McMurray possesses the intellect necessary to understand its clear ruling in the 1985 case, previously discussed herein.

of expenses, costs and fees, together with affidavits within 20 days of this ruling. Plaintiff shall have 10 days from the date of such submission within which to respond to such itemization. The Court will thereafter consider the amount requested and the objections and then impose a reasonable amount of attorney's fees, costs and expenses as a sanction against Plaintiff. The Court is of the opinion that, in view of the circumstances of this case, this monetary sanction is the only penalty which can properly serve the purpose of Rule 11.

Insofar as counsel for Plaintiff, Darwyn P. Fair, is concerned, the Court recognizes the need for further information in order to determine whether Rule 11 sanctions against him may be properly imposed. It is unclear at this time whether Mr. Fair made an adequate investigation as to the facts or the law in this matter. The Court, therefore, shall order Mr. Fair to personally appear before this Court on **Thursday, September 7, 1989 at 2:00 P.M.** in order that he may show cause as to why he should not be personally sanctioned pursuant to Rule 11. The Court at that time shall hear the argument of Defendants Amos and the Board of Supervisors, if they choose to present argument on their motion for sanctions. At that time, the Court shall consider the motion for sanctions and then, if found to be warranted, impose the appropriate type and measure of sanctions against Mr. Fair. *See Thomas*, 836 F.2d at 877-81.

CONCLUSION

In sum, the Court hereby finds that the complaint filed in this action is foreclosed by the prior finding of this Court that the basis of all allegations set forth therein are based on alleged wrongful deprivation of property and that no deprivation — wrongful or otherwise — occurred under the circumstances in this case. Furthermore, the Court finds that Plaintiff failed to state a claim under Mississippi law to quiet title, under §§ 1981, 1982 or 1983, or under the due process clause of the Fourteenth Amendment of the United States Constitution.

Therefore, the Complaint in this action should be and is hereby dismissed with prejudice.

Additionally, the Court finds that Plaintiff Flossie Williams McMurray should be sanctioned in accordance with Rule 11 of the Federal Rules of Civil Procedure and hereby orders Defendant Steven Amos and the Board of Supervisors of Copiah County to submit to this Court within 20 days of entry of this Order an itemization of all attorney's fees, costs and expenses incurred in defending this action, together with affidavits, and Plaintiff to thereafter respond to such itemization with 10 days of such submission. The Court will thereafter impose as a sanction against Plaintiff the amount of fees, costs and expenses as is determined by the Court to be reasonable.

Further, the Court orders counsel for Plaintiff, Mr. Darwyn P. Fair, to appear before this Court on **Thursday, September 7, 1989,** to personally show cause as to why he should not be personally sanctioned in accordance with Rule 11. Defendants Amos and the Board of Supervisors may present argument on this issue at that time. Thereafter, the Court shall consider the appropriateness of personal sanctions against Mr. Fair and, if so deemed, shall impose such sanctions as it finds appropriate in type and measure.

A final judgment shall thereafter be entered in accordance with Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED this the 18th day of July, 1989.

WILLIAM H. BARBOUR, JR.
UNITED STATES DISTRICT JUDGE

(2)

FILED
SEP 24 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 90-343

In The

Supreme Court of the United States

October Term, 1990

FLOSSIE WILLIAMS McMURRY,

Petitioner,

v.

STEVEN AMOS, CHANCERY CLERK, COPIAH COUNTY, MISSISSIPPI, BOARD OF SUPERVISORS, COPIAH COUNTY, MISSISSIPPI, and ERMA D. LEWIS, TAX COLLECTOR FOR THE CITY OF CRYSTAL SPRINGS, MISSISSIPPI,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

WHITMAN B. JOHNSON III
STEEN REYNOLDS DALEHITE & CURRIE
P. O. Box 900
Jackson, MS 39205-0900
(601) 969-7054

Attorney for Respondents Steven Amos, Chancery Clerk, Copiah County, Mississippi and Board of Supervisors, Copiah County, Mississippi

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

QUESTIONS PRESENTED FOR REVIEW

I.

DOES THE PETITIONER'S OWN INADVERTENT REDEMPTION OF PROPERTY SOLD TO HER FOR TAXES SUBJECT THE RESPONDENTS TO POTENTIAL CIVIL RIGHTS LIABILITY?

II.

DID THE PETITIONER PRODUCE ANY EVIDENCE OF RACIAL DISCRIMINATION WHICH WOULD HAVE PREVENTED THE DISTRICT COURT FROM DISMISSING HER CLAIM UNDER 42 U.S.C. § 1982?

PARTIES

Respondents Steven Amos and the Board of Supervisors of Copiah County, Mississippi, are satisfied with the parties to the appeal as stated by the Petitioner. It should be noted, however, that this response is being filed only on behalf of Respondents Amos and the Board of Supervisors of Copiah County, Mississippi. The attorney for Amos and the Board of Supervisors does not represent and has not represented any other Respondents during this action.

TABLE OF CONTENTS

Page

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 1

SUMMARY OF THE ARGUMENT 5

ARGUMENT 7

I. Since McMurry Failed to Appeal a Previous Adverse Decision on the Same Factual and Legal Claims Which She is Now Presenting, She is Barred by the Doctrines of Collateral Estoppel and Federal Claim Preclusion from Re-Litigating Those Claims 7

II. Respondents Amos and The Copiah County Board of Supervisors Were Entitled to Summary Judgment Because the Petitioner Did Not Have a Protected Property Interest Which Was Unconstitutionally Taken From Her 8

III. Petitioner's Claim Under Section 1982 Was Properly Dismissed Because of the Petitioner's Failure to Provide Any Evidence of Racial Discrimination 13

CONCLUSION 14

TABLE OF AUTHORITIES

Page

CASES

Adams v. Taylor, 149 Miss. 750, 115 So. 878 (1928) 10

Bonds v. Greer, 56 Miss. 710 (1879) 9

Connally v. Board of Trustees of Grenada County Hospital, 707 F.2d 175, *reh. den.* 716 F.2d 901 (5th Cir. 1983) 11

Darrington v. Rose, 128 Miss. 16, 90 So. 632 (1922) 9, 10, 11

Fornea v. Goodyear Yellow Pine Co., 181 Miss. 50, 178 So. 914 (1938) 15

Hart v. Catoe, 390 So.2d 1001 (Miss. 1980) 12

Holmes v. Jones, 738 F.2d 711 (5th Cir. 1984) 8

Jamison v. Thompson, 65 Miss. 516, 5 So. 107 (1888) 10

Kron v. Van Cleave, 339 So.2d 559 (Miss. 1976) 12

Levy v. McCay, 445 So.2d 546 (Miss. 1984) 12

McMurry v. Douglas, 385 So.2d 1306 (1980) 2

Whelchel v. Solomon, 180 So.2d 642 (Miss. 1965) 9

Zepponi v. Home Insurance Co., 248 Miss. 828, 161 So.2d 524 (1964) 15

STATUTES AND OTHER AUTHORITIES

Miss. Code Ann. §27-43-1 (Supp. 1990) 12

Miss. Code Ann. §27-43-3 (Supp. 1990) 12

Miss. Code Ann. §27-45-3 (1972) 1, 2, 8

42 U.S.C. §1982 ..... 1, 13, 14

42 U.S.C. §1983 ..... 1, 14

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

In addition to *Miss. Code Ann.* §27-45-3 (1972), which the petitioner claims is involved, the petitioner has also discussed 42 U.S.C. §1982 and 42 U.S.C. §1983.

TITLE 42 §1982. PROPERTY RIGHTS OF CITIZENS.

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

TITLE 42 §1983. CIVIL ACTION FOR DEPRIVATION OF RIGHTS.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress. For the purpose of this section, any act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

The case presently before the Court actually emanates from a long-standing family dispute over property located at 106 Forest Street, Crystal Springs, Copiah

County, Mississippi. On June 14, 1977, Ms. Willie Williams Douglas, the record owner of the property, executed a document entitled "Warranty Deed" in favor of the Petitioner, Flossie Williams McMurry ("McMurry"). In the late summer of 1978, suit was filed by Willie Williams Douglas and others against McMurry requesting a rescission of the document entitled "Warranty Deed". Although Ms. Douglas died during the pendency of the action, the suit was prosecuted by the remaining complainants.

On or about January 31, 1979, the Chancery Court of Copiah County, Honorable Chancellor Michael T. Carr presiding, entered an order rescinding the Warranty Deed that McMurry had obtained from Ms. Douglas. Petitioner McMurry appealed this ruling to the Supreme Court of Mississippi, but the Chancellor's decision was affirmed without opinion. *McMurry v. Douglas*, 385 So.2d 1306 (1980).

When the 1980 taxes on the property were not paid, the property was advertised for sale by Respondent Steve Amos, who at that time was the Copiah County Tax Collector. At the annual tax sale on September 21, 1981, the property was sold to McMurry for the 1980 delinquent county taxes. By purchasing the property at the tax sale, Petitioner obtained an interest in the property subject to the two year redemption period set forth in *Miss. Code Ann.* §27-45-3 (1972).

On January 4, 1982, the property was redeemed by payment of the past due county taxes plus penalties, interest, and costs. Although the Release from Delinquent Tax Sale shows payment by Willie Williams Douglas, the

person that actually paid the past due county taxes plus penalties and costs was Petitioner McMurry. Sometime prior to January 4, 1982, McMurry had been instructed by a Mississippi attorney to pay the Copiah County property taxes. However, by paying the past due taxes, Petitioner redeemed the property such that title reverted to the record owner.

McMurry or someone on her behalf paid the county taxes for 1982 and 1983. The 1984 county taxes were not paid in a timely fashion and the property was advertised for tax sale in the summer of 1985. On August 26, 1985, the property was sold for delinquent 1984 county taxes to Amelia Williams, McMurry's mother. On October 14, 1985, the property was redeemed by J. Cliff Thomas on behalf of Flossie Williams, one of the complainants in the Copiah County Chancery Court action filed in 1978 who obtained a share of title to the property upon the Chancery Court's rescission of the deed to McMurry.

After the redemption of the property by J. Cliff Thomas for Flossie Williams on October 14, 1985, the property has not been sold for delinquent taxes. McMurry or someone on her behalf has continued to pay all property taxes, even though the Chancery Court of Copiah County ruled that she had no interest in the property by virtue of the Warranty Deed dated June 14, 1977 and even though her redemption of the property effectively took away the interest she obtained through the tax sale. Throughout the pendency of this matter, Petitioner has maintained she has had an interest in the property. In fact, in 1988 Petitioner even used the deed previously rescinded in 1979 to trick the Copiah County

Tax Assessor's office into listing her as the owner of the property on the tax rolls.

The case presently before the Court is not the only suit in which McMurry has made allegations of racial discrimination in connection with this property. In addition to the Copiah County Chancery Court proceeding in which McMurry was a defendant, Petitioner filed a suit in 1985 entitled "Flossie Williams McMurry v. Edwin Lloyd Pittman, Attorney General, State of Mississippi, and Minnie Bell Levi", Civil Action No. J85-0819(B), United States District Court, Southern District of Mississippi, Jackson Division. Judge William H. Barbour, Jr., who also presided at the trial court in the present case, dismissed that lawsuit on grounds that McMurry did not have a protected property interest. Suit was also filed by McMurry in 1983 in United States District Court for the Eastern District of Michigan in Detroit, Michigan. The defendants in that case included Judge Michael Carr, the Chancellor who presided in the Copiah County suit; Lawrence Hood, the Chancery Clerk of Copiah County at the time; and James D. Shannon, McMurry's attorney in the Copiah County suit. That suit also alleged racial discrimination but was dismissed.

Although such is not shown of record, McMurry instituted another federal court suit after Judge Barbour dismissed the present action, this time against Chancery Judge Carr in the Eastern District of Michigan. Entitled "McMurry v. Carr", and being Civil Action No. 89-CV-73706-DT, this action was transferred to the Southern District of Mississippi, where it became Civil Action No. J90-0134(B). Judge Barbour again dismissed the case and awarded sanctions against Petitioner. Finally, since that

dismissal, Petitioner has filed still another federal court case in the Eastern District of Michigan, this time against the Supreme Court of Mississippi. The case styled "McMurry v. Supreme Court of Mississippi, et al", Civil Action No. 90-CV-72111-DT, has not yet been transferred to the Southern District of Mississippi.

SUMMARY OF THE ARGUMENT

Petitioner has stated no grounds upon which this Court customarily grants a writ of certiorari. She has cited no decision from a Court of Appeals which conflicts with the decision of the Court of Appeals for the Fifth Circuit in this case. There was no important question of federal law which was in issue, and there was no case from this Court which was clearly contravened by the decisions of the trial court or the appeals court.

Petitioner's claim arises from allegations that Section 1982 and Section 1983 were violated because she was not issued a tax deed to real property which she had purchased at a tax sale. Petitioner was not entitled to a tax deed until the Mississippi statutory redemption period had run. McMurry herself inadvertently redeemed the property, thereby voiding her purchase at the tax sale such that it was her own action which prevented her from obtaining the property.

McMurry's claim under Section 1983 is without merit because the Copiah County Respondents against whom suit is brought did not deprive the Petitioner of any right. Any "deprivation" is more accurately called a surrender

since it occurred as a result of McMurry's acts in redeeming the property, albeit inadvertently. However, McMurry received documentation at the time of the redemption showing that a redemption had occurred such that she had notice of her mistaken payment and could have taken steps to try to correct it *at that time,* not six years later.

McMurry's allegations of race discrimination, which arise from her Section 1982 claim, are also totally without merit because they are without factual support. By inadvertently redeeming the property from the tax sale, McMurry effectively perfected title back in the original owners. These original owners, who were relatives of McMurry, were also black Americans. This clearly establishes that McMurry's race had nothing to do with the refusal to give Petitioner a tax deed. Further, Petitioner is collaterally estopped from making any claim for her failure to appeal other federal court cases she filed for the same causes of action.

Finally, Petitioner's argument regarding vicarious liability of the county under Section 1982 is moot simply because, without any substantive liability, the issue of whether vicarious liability applies to Section 1982 actions is irrelevant. Since Ms. McMurry has been completely unable to offer facts which would support a viable claim against any individual Copiah County respondent, no claim can exist against the county or its governing body.

ARGUMENT

I. SINCE McMURRY FAILED TO APPEAL A PREVIOUS ADVERSE DECISION ON THE SAME FACTUAL AND LEGAL CLAIMS WHICH SHE IS NOW PRESENTING, SHE IS BARRED BY THE DOCTRINES OF COLLATERAL ESTOPPEL AND FEDERAL CLAIM PRECLUSION FROM RELITIGATING THOSE CLAIMS.

As can be seen from the Statement of Facts, the case presently before the Court is neither the first case nor the last case which Petitioner has filed arising from these same facts. Instead, this case is only one of about six cases which have been filed or are presently pending regarding this piece of property and the actions of various persons with regard to that property. Interestingly enough, United States District Court Judge William H. Barbour, Jr., who presided in the district court on this case, also decided one of the previous cases based upon the same claims of racial discrimination and constitutional deprivation. As he recognized in his opinion dismissing the case, his ruling was the same in that previous case as it was in this case. See Petition for Writ of Certiorari, Appendix C-2. In both suits, Judge Barbour held that McMurry had no right to a tax deed because the property was redeemed. McMurry now tries to avoid the effect of that redemption by claiming that the redemption was not valid.

However, any claim that the redemption was not valid should have been pursued in the case filed back in 1985. By failing to appeal an adverse judgment on the issue of the validity of the redemption, and in fact on all of the same issues presently before this Court, McMurry is barred from attempting to re-litigate those issues.

Holmes v. Jones, 738 F.2d 711 (5th Cir. 1984). For this reason, if no other, McMurry's Petition for Writ of Certiorari should be denied.

II. RESPONDENTS AMOS AND THE COPIAH COUNTY BOARD OF SUPERVISORS WERE ENTITLED TO SUMMARY JUDGMENT BECAUSE THE PETITIONER DID NOT HAVE A PROTECTED PROPERTY INTEREST WHICH WAS UNCONSTITUTIONALLY TAKEN FROM HER.

The Petitioner's claim against Respondents Amos and the Copiah County Board of Supervisors is that she was unconstitutionally denied a tax deed on the property. Judge Barbour in his opinion ruled for the second time that McMurry's claim was without merit because the property was redeemed, although inadvertently, prior to the time that McMurry had a right to demand a tax deed.[1] In attempting to avoid the effect of this redemption, McMurry now argues that the redemption was invalid such that summary judgment should have been precluded.

The entire thrust of McMurry's argument regarding the validity of the redemption is that she was not within the class of persons entitled to redeem the property. However, Section 27-45-3 states that "any person interested in the land sold for taxes" can redeem the property.

---

[1] *Miss. Code Ann.* §27-45-3 (1972) sets up a two year redemption period after the tax sale. Since the tax sale on the property occurred on September 21, 1981, McMurry's claim for a tax deed would not ripen until September 22, 1983, during which time that right could be voided by redemption of the property. The redemption at issue occurred on January 4, 1982, well within the two year period.

At the time of the redemption on January 4, 1982, McMurry was "interested" in the property since she had purchased it at a tax sale. The fact that her payment of the back taxes took away the interest she had to the property does not make the redemption invalid. Mississippi law has always recognized that "statutes allowing the right of redemption from tax sales are to be liberally and benignly construed in favor of the right to redeem." *Darrington v. Rose*, 128 Miss. 16, 90 So. 632, 634 (1922). *See also Bonds v. Greer*, 56 Miss. 710 (1879).

When McMurry showed up to pay the back taxes on the property on January 4, 1982, she claimed the property as her own, as she has done ever since she obtained the deed from Willie Williams Douglas, which the Copiah County Chancery Court ultimately voided.[2] After all

---

[2] The record is replete with instances of McMurry's claiming ownership of the property. During her deposition, she contended that the Warranty Deed from Willie Williams Douglas was still valid and could not be cancelled or rescinded. (McMurry Deposition, p. 38). In fact, in 1988, McMurry, or someone on her behalf, used the original deed from Willie Williams Douglas, which had been rescinded by court order, to trick the Copiah County Tax Assessor's office into placing Flossie B. Williams McMurry's name on the tax rolls for the property. (Barlow deposition, p. 4-7). McMurry admitted in her deposition that she has claimed an interest in the property ever since she began paying taxes on it. (McMurry deposition, p. 42). She even states in her interrogatory answers that she had an interest in the property when she bought it at the tax sale in 1981. (Interrogatory Answer No. 11, Plaintiff's Discovery Responses, p. 9). If she had an interest in the property at the time of the tax sale, then she is a tenant in common and cannot wrest title away from her co-tenants through a tax sale purchase. *See Whelchel v. Solomon*, 180 So.2d 642 (Miss. 1965).

these years of having claimed an interest in the property, McMurry now wants to put the burden on a county tax collector or chancery clerk to first determine ownership of the property and then tell her she does not have an interest in the property sufficient to allow her to redeem it. With McMurry's past history, however, one wonders how a chancery clerk or tax assessor could convince her she has no interest in the property when a chancellor's ruling telling her that was completely ineffective. Nonetheless, the rulings of the Supreme Court of Mississippi simply do not require this of state officials. "When one, claiming to be the owner of land sold for taxes, offers to redeem, the officer before whom the redemption is sought to be made *is not required to try the title of such alleged owner.*" *Darrington v. Rose*, 128 Miss. 16, 90 So. 632, 634 (1922) (emphasis added).

McMurry also claims that she does not fall within the category of a person who acted with the owner's consent because there was an ongoing dispute between her and the heirs who had obtained ownership of the property. However, it seems somewhat strange for McMurry to say that the record owners objected to her paying the taxes. As the Mississippi Supreme Court has recognized, one who pays the taxes of another without a legal compulsion is a mere volunteer, and that is exactly what McMurry was in this case. *See Adams v. Taylor*, 149 Miss. 750, 115 So. 878 (1928). Additionally, as was noted in *Jamison v. Thompson*, 65 Miss. 516, 5 So. 107 (1888), "redemption [is] for the benefit of the owner, *whoever he may be.*" *Jamison*, 5 So. at 108 (emphasis added).

Interestingly enough, in arguing that she had no interest in the property at the time of the redemption,

McMurry has conclusively established that the summary judgment was proper. Before a plaintiff can recover for alleged civil rights violations, there must be some constitutionally protected property interest. By arguing she had no interest in the property, such that the redemption was invalid, McMurry surrenders a vital element of her claim. Without an interest in the property, McMurry's Section 1983 claim must be dismissed. However, with a property interest, the redemption was valid, and she lost any future claim for a tax deed.

One must even wonder if a purchaser at a tax sale has a property interest sufficient to invoke constitutional protection under Section 1983. State law determines whether a particular claim is a property interest for purposes of the civil rights acts. *Connally v. Board of Trustees of Grenada County Hospital*, 707 F.2d 175, *reh. den.* 716 F.2d 901 (5th Cir. 1983). In the case at bar, McMurry's interest in the property was that of a tax sale purchaser. The Supreme Court of Mississippi has recognized the contingent nature of such an interest.

> [T]he purchaser at a tax sale . . . buys with full knowledge that his title cannot be absolute until the time for redemption expires, and that, if his title is defeated by redemption, it reverts to the original owner, and if it is redeemed, he is fully reimbursed for his outlay, with interest.

Darrington, 90 So. at 634. Since a tax purchaser's interest is contingent, until such contingency occurs, his interest is simply not entitled to protection under state law, and therefore not under the civil rights acts.

The contingent, and therefore unprotected, nature of McMurry's tax deed claim is easily seen when the

remaining Mississippi statutes regarding tax sales and redemptions are examined. McMurry apparently wants the Court to believe that, if she had not redeemed the property herself, she would have ultimately obtained a tax deed because the property would not have been redeemed within the two year period. However, Section 27-43-1 and Section 27-43-3 of the Mississippi Code require that notice be given to property owners within 180 days and not less than 60 days prior to the expiration of redemption time. This notice is required to be *personally served* on the owner if the owner is a resident. If these statutory provisions are not satisfied, the original owner may have the tax deed cancelled. *Hart v. Catoe*, 390 So.2d 1001 (Miss. 1980). Consequently, all that McMurry could have even conceivably lost by virtue of her inadvertent redemption was the hope that the true owners would not respond to the personally served notice required by state law. Since the required notices were not sent out, petitioner is not presently entitled to a tax deed. The Mississippi Supreme Court has long recognized a right of equitable redemption, even after the statutory period has run, where there are extenuating circumstances showing a reason for non-payment of taxes. *Levy v. McCay*, 445 So.2d 546 (Miss. 1984); *Kron v. Van Cleave*, 339 So.2d 559 (Miss. 1976). In this case, a Mississippi court would certainly apply equitable redemption where the owners have not been given the statutorily required notice that the property needed to be redeemed. Consequently, at this point in time, McMurry has no right to a tax deed, even assuming the invalidity of the redemption, such that the Petition for Writ of Certiorari should be denied.

III. PETITIONER'S CLAIM UNDER SECTION 1982 WAS PROPERLY DISMISSED BECAUSE OF THE PETITIONER'S FAILURE TO PROVIDE ANY EVIDENCE OF RACIAL DISCRIMINATION.

Petitioner has claimed that the Court erred in dismissing her suit and in failing to recognize her theory of liability under 42 U.S.C. §1982, which prohibits racial discrimination in the purchase, sale and ownership of property. Petitioner contends that she was not given a tax deed simply because she is a black American. However, Petitioner produced no evidence whatsoever in support of her allegations. Petitioner apparently believes that the mere fact that she was not given a tax deed, when coupled with the fact that she is a black American, somehow translates into proof that the reason she did not get the tax deed was related to her race.

However, as was discussed earlier in the brief, the Petitioner's inability to get a tax deed had absolutely nothing whatsoever to do with her race. She was not given a tax deed because the property was redeemed from the tax sale within the two year statutory period.

The fact that Petitioner's race had nothing to do with the situation presently before the Court is most clearly shown by the fact that the record title owners, who are relatives of the Petitioner, are also black Americans. This is not an instance where the alleged actions of the Copiah County Respondents resulted in a white American obtaining title to the property over a black American. Proof of racial animus, either directly or by statistics, was totally absent from Ms. McMurry's case such that the

lower court acted correctly in dismissing the Petitioner's suit.[3]

The Petitioner also discusses in her filing the district court's ruling regarding an alleged immunity issue. The issue before the lower court was not immunity but instead involved the vicarious liability issue under the Civil Rights Acts. The district court simply recognized that vicarious liability is not a viable theory under §1983. However, even if it is assumed that the Copiah County Board of Supervisors could be liable under a vicarious liability theory for a Section 1982 violation, the failure of the Petitioner to provide any evidence whatsoever indicating racial animus by the individual Respondents makes the issue moot. Without the ability to show any individual acts of discrimination, there is no individual liability which can vicariously put responsibility on the Board of Supervisors. Consequently, the Petition for Writ of Certiorari should be denied.

CONCLUSION

McMurry's whole case flows from an allegation that the Copiah County Respondents acted deliberately, intentionally, and recklessly to divest her of her right to be issued a tax deed after September 21, 1983. However, a

[3] McMurry's petition seems to imply that the trial court dismissed her case for failure to state a claim on which relief could be granted. However, these Respondents had filed a motion for summary judgment, complete with deposition references, interrogatory citations, and documents. Consequently, the dismissal was under Rule 56, not Rule 12(b)(6).

review of McMurry Deposition Exhibit 8, which McMurry forwarded to this Court with her petition, clearly indicates that it is a Release from Delinquent Tax Sale and that "said land is hereby released from all claim or title of state or purchaser under said tax sale". Anyone reading the document can easily ascertain that the property had been redeemed and the tax sale voided. It is hard to understand how McMurry can claim that the Copiah County Respondents acted maliciously when a simple examination of the documents she received when she paid the back taxes would indicate that she had redeemed the property. As the Mississippi Supreme Court has recognized, a person cannot claim to avoid the effect of a document simply by failing to review it. *Zepponi v. Home Insurance Co.*, 248 Miss. 828, 161 So.2d 524 (1964); *Fornea v. Goodyear Yellow Pine Co.*, 181 Miss. 50, 178 So. 914 (1938).

In any event, Petitioner's own actions in mistakenly redeeming the property can not be construed as a governmentally sponsored taking such that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

WHITMAN B. JOHNSON III
STEEN REYNOLDS DALEHITE & CURRIE
Post Office Box 900
Jackson, Mississippi 39205-0900
Telephone 601/969-7054

Counsel of Record for Respondents, Steven Amos, Chancery Clerk, Copiah County, Mississippi and Board of Supervisors, Copiah County, Mississippi